

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No. : 10/757,146
Applicant : Dwight D. Smith
Filed : January 14, 2004
Title : APPARATUS FOR RETENTION OF BATTERY IN CHARGER
TC/A.U. : 2838
Examiner : Johali A. Torres Ruiz
Docket No. : 18133
Customer No.: 27268

REPLY BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants submit the following Reply Brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer ("Answer") mailed on January 20, 2010 responsive to Appellant's Appeal Brief ("Brief") filed on November 25, 2009.

I. Argument

The remarks presented herein are provided in response to the Examiner's Answer and supplement, but do not replace, the arguments presented in the Brief. In response to the Examiner's Answer, Applicants simply want to address three main points:

- 1) The Examiner's combination of Lee & Wulff has changed the principle of operation of the primary reference;

- 2) The Examiner has failed to show how the combination of Lee & Wulff, even if combinable, would render the claims obvious; and
- 3) The Examiner has failed to show an articulated reasoning behind the combination.

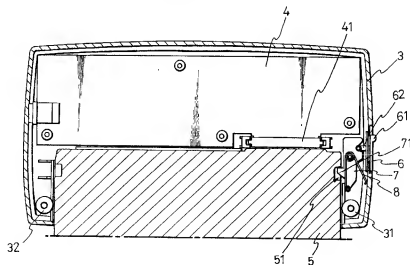
1. The Combination of Lee & Wull changes the Principle of Operation of Lee

In supporting her rejection of the solicited claims, the Examiner stated in her Answer that "one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references". Applicants, however, believe that a proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference. MPEP 2143.01.

The Examiner admits that "Lee does not explicitly teach a cam assembly nor the gripping member is operatively connected and moveable by operation of said cam assembly" but continues on by indicating that "Wulff teaches a cam assembly and a gripping member that is moveable by operation of said cam assembly".

As mentioned previously, Lee shows in Fig. 3A below, a grip (61) having a projection (62) at a position close to locking member (7).

FIG. 3A



Rather, the Examiner disregards Lee's teaching and indicates that it would be obvious to combine Wulff for the proposition of a camming member for engagement of the battery. However, Wulff is no more relevant than Lee. Wulff teaches a two-step disconnection mechanism where the battery is in a fully locked position in Fig. 2A. When the buttons (20) are depressed, battery (22) may be retracted to a position shown in Fig. 2C which exposes a second latch (30). Latch (30) when depressed, allows battery to be removed as shown in Fig. 2D.

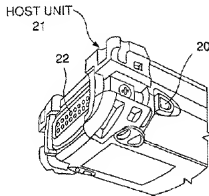


FIG. 2A

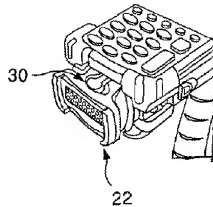


FIG. 2C

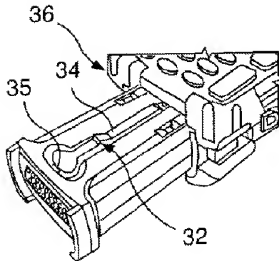


FIG. 2D

Thus, Applicants are not arguing the references separately as indicted by the Examiner rather Applicants are simply indicating that the combination of the two references changes the principle of operation of the Lee. Note that the Examiner has retained at least a portion of Lee's structure in place; as shown on page 7 of the Answer, she has reproduced Lee's Figure 3A, with the annotation (not original in Lee) of "Frictional Engagement". And on Page 6 of the Answer indicates that "when the gripping member (71) of the charging device (3) is in contact with battery element (51) ---". Thus, the Examiner has reconstructed Lee with a portion of Wulff, changing the principle of operation of Lee.

2. The Examiner has failed to show how the combination of Lee & Wulff renders the claims obvious

Applicants believe that the two references, even if combinable, would not teach Applicants' claims 1 and 10-12. Wulff merely teaches some type of a latch/catch mechanism as explained above. Wulff does not appear to show a gripping member which is cammed into the side of a battery to frictionally hold the battery in place. Given the lack of disclosure of Wulff, it is not clear how Wulff could be combined with Lee to obviate Applicants' claims.

Applicants are not arguing that Wulff does not have the following disclosure "cams or wheels rotating on a shaft, at their ends can deflect the flex spring sheet causing the release or engagement of the projection on the battery unit (10)." Applicants themselves pointed out this quote in their brief, see the last sentence spanning the pages 5 and 6 of 14 of Applicants' brief. However, Applicants are indicating that there is so little disclosure about the Wulff mechanism that it is not clear how it could possibly be combined with Lee to teach the elements of Applicants' claims 1 and 10-12.

Applicants reiterate that Lee does not show a gripping engagement of the battery. Clearly the Lee reference shows a latching structure between Lee's elements 51, 71 (see page 2 herein) which is a simple latch/catch arrangement, not a frictional engagement.

Thus, Applicants believe that the Examiner has failed to show how the combination of Lee and Wulff would be combinable to obviate Applicants' claims. Said differently, even if Lee and Wulff were properly combinable, Lee's member (71) (according to the Examiner's combination) would still be in place and Applicants believe that the combination of Wulff does

not transform member (71) into something that it is not; that is, it is still a simple latch, not a frictionally engageable gripping member.

3. The Examiner has failed to show an articulated reasoning behind the combination of Lee and Wulff

Even after Applicants' argument that the Examiner has not provided articulated reasoning for the combination of Lee and Wulff, the Examiner simply summarizes at the top of page 13 indicating that "to have released or engaged the battery, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Lee to have the gripping member be moveable by operation of a cam assembly as taught in Wulff."

KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." The Examiner should also "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." The Examiner should make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." Anything less than an explicit analysis is not sufficient to support a prima facie case of obviousness.

Applicants believe that the Examiner's statement that Lee can be modified "to have the gripping member be moveable by operation of a cam assembly as taught in Wulff" is not the articulated reasoning contemplated by the *KSR* decision, but rather is a mere conclusory statement. Applicants believe that this is typical hindsight construction in that the Examiner has indicated that Wulff teaches a cam assembly that could cam Lee's member (71) into a frictional engagement.

II. Conclusion

In view of the above, Appellants respectfully submit that the present application is in condition for allowance and respectfully request the Board of Appeals to direct the Examiner to withdraw the Final Action and issue a Notice of Allowance.

If necessary, Appellants request that this response be considered a request for an extension of time appropriate for the Reply Brief to be timely filed. Appellants request that any fees required in connection with this filing be charged to the account of Baker & Daniels, Deposit Account No. 02-0390.

Respectfully submitted,

Dated: March 19, 2010

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